

Appeal of Earl L. and Evelyn R. Steurer

The issue before us is whether respondent properly determined that appellants* car racing activity was not engaged in for profit.

During the years at issue, Earl was employed by W. H. Kennedy Drywall and Plastering Company as a supervisor, whereas Evelyn was a housewife. Appellants' personal income tax returns indicate that Earl earned \$60,837, \$83,609, and \$39,718 in the years 1978, 1979, and 1980, respectively, from his employment. In addition, appellants earned small amounts of interest and dividend income in each year (1978: \$3,152; 1979: \$2,591; 1980: \$4,317) and an unexplained item of income of \$26,856 in 1980. Evelyn is a party to this appeal solely because she filed a joint income tax return with her husband Earl for the years in issue. Accordingly, only Earl will be hereinafter referred to as "appellant."

Prior to the years at issue, appellant had become interested in car racing. In January of 1975, appellant purchased a racing car and began to develop his own **car** racing team at the stock car class level. (App. **Ex. 1.**) Later in 1975, 1976, and 1977, appellant developed his interest in car racing with his team competing in higher racing classes known as the "street stocks" and "sportsman" classes. (App. Exs. 2 and 3.)

In early 1978, the first year under appeal, appellant's racing team began racing in the higher "purse" class known as the **"modifieds."** The cars which were used were built by a professional race car builder known as Stock Car Products in Santa Fe Springs, California, in 1978 and 1979. The engines for the cars were built by a professional engine builder known as Fisher Racing Engines in Chatsworth, California. Appellant alleges that in order to remain competitive, he "used all of the latest engine and racing improvements, and in fact, [was] required to put a new engine in the [car] approximately every two to three months." (App. **Br. at 2.**)

Appellant further alleges that before moving up to the **"modifieds"** class in 1978, the first year under appeal, he consulted with various successful and profitable racing teams (e.g., **Insolo's** Racing Team, **Herchel McGraff's** Racing Team, Stock Car Products Racing Team, and **Sunny Easley's** Racing Team) to determine the profitability of racing in that class. (App. **Br. at 3.**) Appellant apparently learned that if he could obtain sponsors to help defray the costs of racing, profitable racing operations were more likely. With this in mind, appellant

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was successful in obtaining some sponsors. However, appellant was unsuccessful in obtaining sponsorship from other companies such as Squirt Bottling Company. Nevertheless, even Jimmy **Insolo**, an extremely successful race car driver, acknowledged that it is "almost impossible" to raise the large sums of money needed to race successfully (see App. Ex. 4) and, implicitly, to make a profit.

During the years at issue, appellant used his son Glen Steurer as their professional driver. While respondent has alleged that Glen had had no race-driving experience prior to the years at issue (Resp. Br. at 2), the record would indicate otherwise. In 1974, Glen had been a relief driver in the "street stocks" class and by 1975 had become a starting driver in that class. Moreover, prior to 1975, he had been involved in motorcycle racing as a rider. In 1976 and 1977, Glen had raced successfully in the "sportsman" class and in 1978 had begun to race in the "**modifieds**" class. The record indicates that in June of 1977, Glen was victorious in a nationally recognized race at Riverside International Raceway, taking first place in the Black Gold 150. (App. Ex. 4.). Glen qualified second in his class for the Stock Car Products 300 held at Riverside International Raceway on January 21, 1978. (App. Ex. 5.) In addition, the record indicates that Glen qualified fourth for the Warner W. Hodgdon 200 at Riverside International Raceway on June 11, 1978 (App. Ex. 6), and finished second in the Stock Car Products 300 at the same track on January 13, 1979. (App. Ex. 7.) He also qualified for the Warner W. Hodgdon 200 held on November 17, 1979, at Ontario Motor Speedway (App. Ex. 12) and raced at the Saugus Speedway where he placed in the top three for total points during at **least** part of the 1979 season (App. Exs. 8 and 9) and at least part of the 1980 season. (App. Ex. 13.) Appellant's racing team continued to race through 1980 with Glen as the driver (App. Ex. 15), but due to the death of a friend of Glen's during a race, appellant discontinued his **racing** involvement after that racing season. (App. Br. at 4.)^{2/} However, subsequently, Glen did

2/ On page one of respondent's Exhibit D, appellant Earl L. Steurer noted:

1980 started good, but after my driver's very close friend was killed in a crash he lost interest in driving. At this time I decided to terminate the racing team.

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re-enter racing for another team and apparently has been quite successful.

Appellant assembled a racing crew consisting of Mike Steurer as crew chief, Glen, himself, and other volunteers. Appellant and his sons, Glen and Mike, maintained the race car, each spending substantial amounts of time. Appellant alleges that he entered all of the races he could during the racing season. However, on occasion, appellant was unable to race due to the fact that car parts were being ordered or in the process of being machined.

On his personal income tax returns for years 1978, 1979, and 1980, appellant claimed business deductions of \$15,639, \$38,217, and \$10,925, respectively, for losses arising from his race car activities. Upon audit, respondent disallowed the deductions for such losses finding that the activity was not a transaction entered into primarily for profit. Appellant protested, but respondent affirmed the proposed assessments and this appeal followed.

Section 17233 provides, in relevant part, that if an activity is "not engaged in **for profit**," only those deductions allowable regardless of a profit objective (**e.g.**, taxes or interest) may be allowed. Accordingly, **the disputed deductions with respect to the race car operations must be disallowed if such activity was "not engaged in for profit."** Section 17233 is substantially identical to section 183 of the Internal Revenue Code of 1954. Treasury Regulation section **1.183-1**, subdivision (a), provides, in relevant part, that "[w]hether an activity is engaged in for profit is determined under section 162 and section **212(1)** and (2)" The tax court has stated that the test for determining this question "under section 162 is whether the individual's **primary purpose** and intention in engaging in the activity is to make a profit." (Golanty v. Commissioner, 72 T.C. 411, 425 (1979) (emphasis added).) Of course, whether the activities are engaged in primarily for such **profit-seeking** motive is a question of fact upon which the taxpayer has the burden of proof. (Appeal of Guy E. and Dorothy Hatfield, Cal. St. Bd. of Equal., Aug. 1, 1980; Appeal of Clifford R. and Jean G. Barbee, Cal. St. Bd. of Equal., Dec. 15, 1976.) The regulations^{3/} provide

^{3/} **Treasury Regulation** section 1.183-2, subdivision (b), provides in, relevant part, that among the factors which
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a list of factors relevant in determining whether a taxpayer has the requisite profit motive. While all facts and circumstances with respect to the activity are to be taken into account, no one factor is determinative in making this determination. The same regulations provide that it is not intended that only the listed factors are to be taken into account in making the determination or that the determination is to be made on the basis of the number of factors.

In the instant appeal, appellant has argued that (1) accurate books and records were kept, (2) their son Glen was a proficient driver and a professional car builder and engine builder were retained, and (3) significant amounts of time and effort were spent in the activity. The existence of such facts, however, would be consistent with either a hobby or an activity engaged in for profit. Moreover, all of the documentary evidence submitted herein by appellant relates to the racing activities of his son Glen and not to his own activities. Indeed, there is no documentary evidence in the record which would in any way establish appellant's involvement in car racing. (Compare Bryson v. Commissioner, ¶ 82,424 T.C.M. (P-H) (1982).) While the expertise of his advisors is of some relevance, it is critical to remember that in this appeal we are reviewing the activities of appellant and not those of his son. In this light, we find the record to be deficient in establishing appellant's profit motive with respect to his involvement in the subject racing activities. Notwithstanding any other evidence in support of appellant's allegations, we find one factor compelling in this appeal: appellant's explanation why the racing operations were terminated. As indicated above, appellant stated that his son Glen, his driver, lost interest in driving after a very close friend of his

(3/ Continued)

normally should be taken into consideration are the following: (1) manner in which the taxpayer carries on the activity; (2) the expertise of **the taxpayer** or his advisors; (3) the time and effort expended by the taxpayer in carrying on the activity; (4) an expectation that assets used in the activity may appreciate in value; (5) the success of the taxpayer in carrying on other similar or dissimilar activities; (6) the taxpayer's history of income or losses with respect to the activity; (7) the amount of occasional profits, if any, which are earned; (8) the financial status of the taxpayer; and (9) elements of personal pleasure.

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was killed in a crash. When his son lost his interest in racing, rather than getting another driver and maintaining the continuity of the racing team as would be expected from a profit-oriented enterprise, appellant decided to terminate his own involvement with the racing team. We note, however, that Glen did continue to race for another team, moving up in class. This would lead us to conclude that appellant's primary interest in engaging in the racing activities was to further the racing career of his son Glen and not to make a profit. This conclusion is bolstered by evidence that it was extremely difficult to raise the large sums of money needed to race successfully and, thereby, make a profit. Therefore, based upon the record before us, we must find that appellant simply has not established his contention that he engaged in the subject race car activities primarily for profit and that, accordingly, respondent's action must be sustained in full.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Earl L. and Evelyn R. Steurer against proposed assessments of additional personal income tax in the amounts of **\$1,720.42, \$4,208.41, and \$1,243.00** for the years 1978, 1979, and 1980, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day Of February , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9